

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

KENNETH YOUNG,

Plaintiff,

v.

Index No.: 803989/2024

Hon. Paul Wojtaszek, J.S.C.

TOWN OF CHEEKTOWAGA,

Defendant.

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT
DEFENDANT'S MOTION TO STRIKE**

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PRELIMINARY STATEMENT

Plaintiff persists in his theatrical efforts to paint the Town as the villain in this litigation. Without regard for procedural rules, issues of relevance, and the law, Plaintiff wants this Court to believe that the Town — and apparently its attorneys — are invidious actors. Plaintiff goes so far as to accuse the Town of misrepresentations before this Court.

Plaintiff filed his pre-discovery motion for partial summary judgment (“Plaintiff’s Motion”) on May 20, 2024. On June 12, 2024, the Town filed its Original Opposition to Plaintiff’s Motion (the “Original Papers”). In August 2024, the Town chose not to proceed with a referendum to establish wards. The Town immediately notified the Court, and with Court permission, amended its Original Papers and filed an amended Opposition to Plaintiff’s Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment papers (the “Town’s Amended Opposition/Cross-Motion”) to reflect that choice. Nothing in the Town’s arguments rests on the proposed ward referendum.

Plaintiff’s counsel would have this Court believe that they had an ethical duty to “correct” the record by submitting evidence and arguments based on efforts to establish wards in 1953 and 2024. Plaintiff does not share with the Court how he believes the 1953 referendum addresses a 2024 referendum, or more importantly, his actual case. Plaintiff would have this Court believe that that evidence related to those efforts somehow impacts the purely legal constitutional arguments raised in the Town’s Cross-Motion – and it certainly doesn’t cure the gaping holes in Plaintiff’s motion. Plaintiff would have this Court believe that such evidence and arguments—filed solely to depict the Town as disingenuous at best and deceitful at worst—somehow do not prejudice the Town. The Court should not believe Plaintiff’s absurd arguments.

The Town moves to strike Plaintiff's new evidence and arguments pertaining to the Town's 1953 ward efforts and August 2024 ward efforts (the "Improper Submissions"). Plaintiff's opposition to the Town's motion to strike posits nothing more than incorrect and irrelevant arguments. The Court should disregard Plaintiff's opposition and grant the Town's motion to strike.

FACTUAL BACKGROUND

The facts relevant to the motion are set forth in the Affirmations of Daniel A. Spitzer, dated October 18, 2024 ("Spitzer Aff. 1") and June 11, 2025 ("Spitzer Aff. 2"). These facts are incorporated herein by reference.

ARGUMENT

POINT I. THE COURT SHOULD GRANT THE TOWN'S MOTION TO STRIKE.

A. Plaintiff's Improper Submissions Do Not Correct the Record.

There are no errors or misleading statements in the Town's papers that require correction. And Plaintiff's Improper Submissions certainly do not serve that end. Plaintiff's arguments to the contrary ring hollow.

1. The Town's Original Opposition/Cross-Motion Papers are Not the Operative Pleadings.

Plaintiff argues that his Improper Submissions are justified, in part, because the 2024 ward efforts "were touted in the Town's original cross-motion papers of June 12, 2024." Doc. No. 161, p. 9; *see also id.* at p. 14 (noting that the "material in question" had been addressed in the Town's original Opposition/Cross-Motion papers). Notably, Plaintiff's Original Papers do not rely upon or reference the 1953 ward efforts so Plaintiff's position that the 1953

ward efforts are relevant remains perplexing. Regardless, the Town's Original Papers are irrelevant because the Town subsequently amended those papers. Spitzer Aff. 2 ¶¶ 12-14. The Town's Original Papers were updated to reflect that the Town was not proceeding with a ward referendum at that time and, thus, the Town's Amended Opposition/Cross-Motion did not rely upon the 2024 ward efforts in opposition to Plaintiff's Motion or in Support of its Cross-Motion. The Town's operative papers are the Amended Opposition/Cross-Motion papers filed on September 27, 2024. Thus, Plaintiff was permitted to reply to the contents of the Town's September 27, 2024 Opposition and to oppose the Town's September 27, 2024 Cross-Motion. Plaintiff was *not* permitted to reply to or oppose the Original Papers, filed on June 12, 2024.

To the extent Plaintiff relies upon the Town's Original Papers to justify its inclusion of materials irrelevant to the Amended Opposition/Cross-Motion papers, that reliance is fatally flawed.

2. The Town Did Not Conceal the State of the 2024 Ward Efforts from the Parties or the Court.

Incredibly, Plaintiff insinuates that the Town's attorneys have not complied with their ethical duty to alert the Court to the change in circumstances regarding the 2024 ward efforts. *See* Doc. No. 161, pp. 13-15. According to Plaintiff, Plaintiff's attorneys had an ethical duty to make such disclosures. *See id.* Once again, this argument does not address the Plaintiff's submission of evidence and arguments regarding the 1953 ward efforts. So, this argument does not even attempt to justify that inclusion. As to the Improper Submissions on the 2024 ward efforts, the Town never concealed the fact that it elected not to proceed with a ward referendum from the parties or the Court.

In fact, on August 12, 2024, the Court held a conference to discuss the Town's need to amend its Original Papers. Spitzer Aff. 2 ¶¶ 7-11. Plaintiff's counsel was present at that conference. *Id.* at ¶ 10. As discussed during the conference, that need stemmed from the fact that the Town had elected not to proceed with implementing wards at that time. *Id.* at ¶ 6-11. As such, the Town had to amend its papers to remove its reliance upon a fall 2024 ward referendum to oppose Plaintiff's Motion. Plaintiff either forgets or conveniently ignores this conference and tries to depict the Town and its attorneys as less than credible and negligent in their ethical duties. This argument is mistaken, prejudicial, and should be disregarded by the Court.

3. The Town's Amended Spitzer Affirmation & Counterstatement of Material Facts Do Not Justify Plaintiff's Improper Submissions.

Plaintiff also points to the tenuous and sparse references to the Town's August 2024 ward efforts in the Amended Affirmation of Daniel A. Spitzer in opposition to Plaintiff's Motion and in support of the Town's Cross-Motion (Doc. No. 56) (the "Amended Affirmation") and the Town's Amended Counterstatement of Material Facts (Doc. No. 67) (the "Amended Counterstatement"). At the outset, the Town notes that neither its Opposition nor its Cross-Motion rely upon the 1953 or 2024 ward efforts in furtherance of its arguments. *See generally* Doc No. 68. In other words, the Town's Amended Memorandum of Law neither references nor relies upon the 1953 or 2024 ward efforts. *See id.* Additionally, none of the Town's Amended Opposition/Cross-Motion papers reference or rely upon the 1953 ward efforts. This further shows the irrelevance of the 1953 Ward Effort evidence and arguments.

Plaintiff points to the following four "references" to the 2024 ward efforts in the Amended Affirmation:

- 1) A heading that states, “**A Remedy is Implemented – And Plaintiff Ignores It.**” Doc. No. 56, p. 7;
- 2) “Plaintiff’s complaint demands that this Court, among other things, force the Town to adopt a district system of voting for all future elections—an action the Town is already taking—and award Plaintiff attorneys’ fees and costs. NYSCEF Doc. No. 1, p. 13.” Doc. No. 56, p. 9;
- 3) Paragraphs 16-18, which state the procedural history of the case related to the steps the Town took to pass Resolutions 2024-34 and 2024-50. Doc. No. 56, p. 4;
- 4) Paragraph 39, which uses the phrase, “these remedies.” Doc. No. 56, p. 8.

Doc. No. 161, pp. 6-8. As to the first item, this heading does not reference wards. In fact, the heading refers to the biennial elections effectuated by the amendment to N.Y. Town Law § 80. See Doc. No. 56, pp. 7-8. It would be illogical for a heading reading “A Remedy Is Implemented” to refer to wards that *had not* been implemented. Whereas, the biennial election amendment, which is discussed in the paragraphs following the heading, *had* been implemented.

As to the second item—regarding the reference to “an action the Town is already taking”—this is not a misstatement. As Plaintiff keenly points out, the Resolutions passed in 2024 pertaining to the implementation of wards “remain on the books and have not been rescinded.” See Doc. No. 161, p. 12. So, while the Town has not elected to proceed with a ward referendum at this time, the Resolutions remain in effect. So, while the Town has not proceeded with a ward referendum, it may do so if it so chooses. Absent rescinding the Resolutions, it would be inaccurate to say that the Town “abandoned” its 2024 ward efforts. However, recognizing the reality that the Town could very well choose not to proceed with a ward referendum in the future, the Town amended its arguments, as reflected in its Memorandum of Law, to remove any defense that relied upon the Town’s efforts to enact wards.

Regarding the third item—the procedural history of the case—this is certainly not grounds to justify Plaintiff’s Improper Submissions. The passage of the 2024 Resolutions is necessarily a part of the history of this case. Moreover, the Resolutions are relevant to the Town’s defense of Plaintiff’s moot claim regarding the passage of a NYVRA resolution. For these same reasons, the Town’s recitation of the passage of Resolutions 2024-34 and 2024-50 in its Amended Counterstatement also does not justify Plaintiff’s Improper Submissions. Plaintiff vilifies the Town for allegedly trying to conceal the fact that it elected to not proceed with a ward referendum. But at the same time, Plaintiff claims that the Town’s recitation of the procedural history of this case suddenly opens the door to evidence and arguments that have no bearing on the resolution of this case. The illogical and circular nature of this reasoning is glaring.

Finally, Paragraph 39’s reference to “these remedies” does not save Plaintiff’s Improper Submissions either. Again, that refers to the paragraphs which proceed it that discuss biennial elections and the fact that the Town Board could ask the Attorney General to assist in implementing a ward system, but nothing in the NYVRA requires the Town to do so. *See* Doc. No. 56 ¶¶ 35-38. Notwithstanding the remedies of biennial elections and the option for the Town Board to reach out to the Attorney General, Plaintiff filed the instant action. These are facts—not the misrepresentations Plaintiff claims need to be cured by evidence of the 1953 or 2024 ward efforts.

B. Plaintiff’s Improper Submissions Are Irrelevant to Plaintiff’s Opposition to the Town’s Cross-Motion for Summary Judgment.

Plaintiff’s final maneuver to try and justify his Improper Submissions is to claim that the submissions were permissible because they were also submitted in opposition to the

Town's Amended Cross-Motion. *See* Doc. No. 161, pp. 10-13. But regardless of whether the Improper Submissions were filed as part of Plaintiff's Opposition, Plaintiff's Reply, or both, they remain improper.

First, Plaintiff accuses the Town of mischaracterizing Plaintiff's October 7, 2024 papers as reply papers. *Id.* at p. 10. This accusation ignores the Town's repeated references to "Plaintiff's Opposition and Reply papers (collectively referred to as 'Plaintiff's Reply Papers')." *See* Doc. No. 147, p. 4; *see also* Doc. No. 146. Nevertheless, the Town's Motion to Strike addresses the impropriety of Plaintiff's submissions in reply to the Town's Opposition because submission in opposition to the Town's Cross-Motion does not make sense. The Town's Cross-Motion arguments, mainly articulated at pages 21 through 35 of Document 68, center solely on the constitutionality of the NYVRA. The constitutionality—or lack thereof—of the NYVRA is not impacted whatsoever by the Town's ward efforts in 1953 or 2024. It is illogical for Plaintiff to argue that his Improper Submissions were submitted in opposition to the Town's constitutionality arguments. Whether the Town enacted wards in 2024 or in 1953 does not affect whether the NYVRA violates the Equal Protection Clause, the Fifteenth Amendment, the First Amendment, Procedural Due Process, or the Separation of Powers Doctrine. As Plaintiff notes, an opponent of summary judgment must come forward with evidence demonstrating the presence of a triable issue. Plaintiff's Improper Submissions do not accomplish this task.

Plaintiff also conflates the purposes of a reply and an opposition. Reply papers are meant to respond to arguments contained in the opposition. *See, e.g., Jackson v. Vatter*, 121 A.D.3d 1588, 1589 (4th Dep't 2014). Oppositions are meant to oppose the arguments made in an opening motion. *See generally Schweitzer v. State Wide Ins. Co.*, 33 Misc.3d 138(a), at *1

(2d Dep't 2011); *Badman v. Civil Serv. Emps. Ass'n*, 91 A.D.2d 858, 858 (4th Dep't 1982).

Plaintiff argues that “all the allegations raised by the Town were new, insofar as they were raised for the first time in the Town’s cross-motion, to which Mr. Young was responding for the first time.” Doc. No. 161, p. 11. Therefore, according to Plaintiff, it was proper for him to file new evidence because the Town raised new “allegations” in its Cross-Motion. *See id.* First, Plaintiff was entitled to an *opposition* to the Town’s cross-motion—not a reply. Second, the Town did not raise new “allegations” in its Cross-Motion. The Town raised arguments regarding the NYVRA’s constitutionality to which the Plaintiff was entitled to oppose. And third, even if this Court were to accept Plaintiff’s destruction of the distinction between opposition and reply papers, Plaintiff’s Improper Submissions do not *respond* to any Cross-Motion or Opposition arguments raised by the Town.

Plaintiff argues that the ward efforts are relevant to the Cross-Motion because they “demonstrate[] that the Town historically has used such a system and the ease with which it was implemented,” Doc. No 161, p. 13 and because “the Town itself passed a series of resolutions in 2024, as well as prior historical measures, to implement precisely the sort of ward system it claims is unconstitutional,” Doc. No. 161, p. 12. But actions the Town took—whether they were a year ago or seventy-one years ago—are not relevant to whether the NYVRA is constitutional.

C. The Improper Submissions Should be Stricken as Prejudicial to the Town.

Prejudicial matters unnecessarily inserted in a pleading should be struck. *See* CPLR 3024(b); *LG 101 Doe v. Wos*, 216 A.D.3d 1393, 188 N.Y.S.3d 830, 832 (4th Dep't 2023). Unnecessary prejudicial matters are those that are irrelevant to the controversy. *LG 101 Doe*

(citing *Wegman v. Dairylea Coop.*, 50 A.D.2d 108, 111 (4th Dep’t 1975)). Matters are only relevant if they have “any tendency in reason to prove the existence of any material fact, i.e., it makes determination of the action more probable or less probable. . .” *Int’l Pub. Concepts, LLC v. Locatelli*, 46 Misc.3d 1213(A), at *8 (Sup. Ct. N.Y. Cnty. 2015) (citation omitted). Plaintiff’s Improper Submissions are irrelevant to the controversy before this Court because they do not make the determination of the case more or less probable.

Plaintiff claims the Improper Submissions show that the Town has implemented wards in the past and the “ease” with which that was done. Doc. No. 161, p. 13. Again, Plaintiff fails to show how this is relevant to his NYVRA claim or the Town’s Cross-Motion—because it is not. Plaintiff’s Motion argues three main points: (1) the Town did not adopt a compliant NYVRA Resolution; (2) the Town’s constitutionality defenses should be dismissed; and (3) Plaintiff is entitled to the imposition of wards. *See* Doc. No. 36. The fact that the Town voted in favor of a ward system over seventy years ago has no bearing on any of these claims. Similarly, the fact that the Town pursued wards last year and halted those efforts neither supports nor refutes Plaintiff’s claims.

Plaintiff also argues that his Improper Submissions related to both the 2024 ward-related resolutions and the prior historical measures are “unquestionably relevant” because the Town argues that the ward system is unconstitutional. *Id.* at p. 12. This argument misses the whole point of the Town’s arguments. The Town has never argued that the imposition of wards is generally unconstitutional—such an argument would be absurd. The Town has argued that the imposition of wards *in this case* pursuant to the NYVRA is unconstitutional because it necessarily requires racial gerrymandering. *See, e.g.*, Doc. No. 68, p. 30. Historical ward efforts

do not affect this argument whatsoever. Similarly, the fact that the Town set out to try and adopt wards in 2024 and elected not to proceed with them also does not affect that argument. Whether the NYVRA is constitutional is neither determined nor affected by the Town's ward-related actions last year or seventy-one years ago.

Moreover, the Improper Submissions are clearly prejudicial. Plaintiff uses them to accuse the Town of “gamesmanship,” Doc. No. 161, p. 16; of attempting to improperly “scrub” the record, *id.*; of submitting false information in violation of the Rules of Professional Conduct, *id.* at pp. 12-14; of trying to mislead the Court, *id.* at p. 10; and of misleading the Court and the public because it purportedly “never intended to hold a referendum,” Doc. No. 83 ¶¶ 30-31. Plaintiff's Improper Submissions are irrelevant to the controversy and should be stricken as prejudicial.¹ The fact that the Town has an opportunity to address the Plaintiff's improper submissions at oral argument is irrelevant—Plaintiff's irrelevant and prejudicial submissions should not be permitted to remain in the record of this case.

CONCLUSION

For the foregoing reasons, the Town respectfully requests that the Court grant its Motion to Strike, along with such other and further relief as the Court deems just and proper.

¹ Plaintiff argues that he has been prejudiced by the Town's “failure to acknowledge its abandonment of a ward system” and “failure to correct the record.” *See* Doc. No. 161, p. 16. This argument can be rejected out of hand. For the reasons articulated in Section I.A., *supra*, the Town did not cover up the fact that it has not proceeded with implementing wards. Even if the Town had engaged in the underhanded tactics it has been accused of, there is no prejudice to Plaintiff. Beyond conclusory arguments, Plaintiff does not describe how that would prejudice him. Whether the Town halted or abandoned its ward system efforts does not affect liability or constitutionality in this case.

Dated: June 11, 2025

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Dated: June 11, 2025
Buffalo, New York



Daniel A. Spitzer, Esq.

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